



Control Number: 47362



Item Number: 1

Addendum StartPage: 0

DOCKET NO. **47362**

FILED

AGREED NOTICE OF VIOLATION §
AND SETTLEMENT AGREEMENT §
RELATING TO DIRECT ENERGY §
LP'S VIOLATION OF PURA §
§§ 17.004(a)(1) AND 39.101(b)(6), §
RELATING TO CUSTOMER §
PROTECTIONS AND SAFEGUARDS §
AS WELL AS 16 TAC §§ 25.474, §
RELATING TO SELECTION OF A §
RETAIL ELECTRIC PROVIDER, §
25.475, RELATING TO GENERAL
RETAIL ELECTRIC PROVIDER
REQUIREMENTS, 25.481, RELATING
TO UNAUTHORIZED CHARGES AND
25.495, RELATING TO
UNAUTHORIZED CHANGE OF
RETAIL ELECTRIC PROVIDER

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PUBLIC UTILITY COMMISSION
PUBLIC UTILITY COMMISSION
FILING CLERK

OF TEXAS

APPLICATION FOR APPROVAL OF SETTLEMENT AGREEMENT

Commission Staff of the Public Utility Commission of Texas (Commission) and Direct Energy, LP and its affiliates (Direct) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of Direct for alleged violations of Sections 17.001(a) and 39.101(b)(6) of the Public Utility Regulatory Act¹ as well as 16 Tex. Admin. Code §§ 25.474 (TAC), relating to selection of a retail electric provider (REP); 25.475, relating to general retail electric provider requirements; 25.481, related to unauthorized charges and 25.495, relating to unauthorized change of retail electric provider.


Staff respectfully requests that the Parties' Application for Approval of Settlement Agreement be granted.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA).

DATE: June 28, 2017

Respectfully Submitted,

Robert M. Long
Division Director
Oversight and Enforcement Division
State Bar No. 12525500




Taylor Kilroy
Attorney-Oversight and Enforcement Division
State Bar No. 24087844
(512) 936-7127
(512) 936-7208 (facsimile)
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, Texas 78711-3326

DOCKET NO. _____

CERTIFICATE OF SERVICE

I certify that a copy of this document will be served on all parties of record on this the 28th day of June, 2017, in accordance with 16 TAC § 22.74.



Taylor Kilroy

DOCKET NO. _____

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO DIRECT ENERGY LP'S	§	OF TEXAS
VIOLATION OF PURA §§ 17.004(a)(1)	§	
AND 39.101(b)(6), RELATING TO	§	
CUSTOMER PROTECTIONS AND	§	
SAFEGUARDS AS WELL AS 16 TAC	§	
§§ 25.474, RELATING TO SELECTION	§	
OF A RETAIL ELECTRIC PROVIDER,	§	
25.475, RELATING TO GENERAL	§	
RETAIL ELECTRIC PROVIDER	§	
REQUIREMENTS, 25.481, RELATING	§	
TO UNAUTHORIZED CHARGES AND	§	
25.495, RELATING TO	§	
UNAUTHORIZED CHANGE OF	§	
RETAIL ELECTRIC PROVIDER	§	

SETTLEMENT AGREEMENT AND REPORT TO COMMISSION

Commission Staff of the Public Utility Commission of Texas (Commission) and Direct Energy, LP and its affiliates (Direct) (together, Parties) enter into this Settlement Agreement and Report to Commission (Agreement). This Agreement resolves and concludes Commission Staff's investigation of Direct for alleged violations of Sections 17.001(a) and 39.101(b)(6) of the Public Utility Regulatory Act¹ as well as 16 Tex. Admin. Code §§ 25.474 (TAC), relating to selection of a retail electric provider (REP); 25.475, relating to general retail electric provider requirements; 25.481, related to unauthorized charges, and 25.495, relating to unauthorized change of retail electric provider.

The Parties agree as follows:

1. The Parties stipulate to the facts contained in the attached Proposed Order and request approval of the Order by the Commission.
2. Commission Staff investigated a series of informal complaints relating to door-to-door sales vendors from January 1, 2014 through February 1, 2016. These complaints were

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA).

both ones received by the Commission's Customer Protection Division as well as by Direct.

3. Direct devoted teams of employees to establishing and maintaining processes for door-to-door sales vendors, and Direct's personnel trained door-to-door agents. Vendor and agent performance is continually managed and monitored, and customer inquiries and complaints are addressed when they occur.
4. Under PURA §§ 17.004(a)(1) and 39.101(b)(6), each customer is entitled to be protected from fraudulent, unfair, misleading, or deceptive practices, including protection from being billed for services that were not authorized or provided.
5. Under 16 TAC § 25.474(f)(1)(B), a REP is required to have its sales force wear clear and conspicuous identification of the REP.
6. One customer complaint alleged that a door-to-door salesman representing Direct failed to wear clear and conspicuous identification while attempting to sell Direct's products.
7. Under 16 TAC 25.474(f)(4)(C), a REP is required to conduct verification of enrollment in the same language used in the sales transaction.
8. One customer complaint alleged that Direct conducted a verification of enrollment in a language other than the language used in the sales transaction.
9. Under 16 TAC 25.474(f)(4)(E), a REP's sales representative is prohibited from participating in the enrollment verification process.
10. Six customer complaints alleged that sales agents representing Direct participated in the verification of authorization process.
11. Under 16 TAC 25.474(f)(4)(A), a REP is required to audio record the entirety of the applicant's verification of the authorization.
12. Thirteen customer complaints alleged that Direct failed to audio record the entirety of the applicant's verification of authorization.
13. Under 16 TAC 25.474(f)(5)(B)(iii), a REP is required to obtain personal access verification data prior to the final confirmation by the applicant that they wish to enroll with the REP.

14. One customer complaint alleged that Direct failed to obtain personal access verification data prior to the final confirmation by the applicant that they wish to enroll with Direct.
15. Under 16 TAC 25.474(f)(5)(C), a REP is forbidden from deeming an enrollment valid in the event the applicant does not consent to be switched to the REP and forbids the REP from submitting a switch request for the applicant's service.
16. Two customer complaints alleged that Direct continued the enrollment process when the applicant failed to provide consent.
17. Under 16 TAC 25.474(k), a REP is required to submit a move-in or switch so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant.
18. Two customer complaints alleged that Direct failed to enact a switch on the date requested by the applicant resulting in early termination fees being levied by the previous REP.
19. Under 16 TAC 25.475(c)(1)(A), the REP is required to provide communications which are not misleading, fraudulent, unfair, deceptive or anti-competitive. Furthermore, pursuant to 16 TAC 25.475(c)(1)(A)(iv), a REP or any of its agents is forbidden from falsely suggesting, implying or otherwise leading someone to believe the person is a representative of a TDU or any other REP.
20. One customer complaint alleged that a salesperson representing Direct identified themselves as the applicant's current REP at that time.
21. Under 16 TAC 25.481(b)(1), a REP is required to inform the customer of all associated charges and that the associated charges will appear on the customer's electric bill.
22. One customer complaint alleged that Direct assessed a fee that was not disclosed to the customer prior to signing up for service and was not informed the fee would appear on their bill. The fee in question was levied against the previous resident but appeared on the current customer's billing.
23. Under 16 TAC 25.495(a)(1), a REP is required to notify the registration agent of an unauthorized change of REP as promptly as possible.

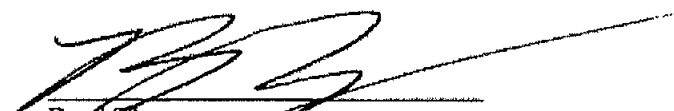
24. One customer complaint alleged that Direct was informed by a customer of an inadvertent gain on January 14, 2015, but that Direct did not notify the registration agent of the unauthorized change of REP until March 25, 2015.
25. Direct ceased door-to-door solicitations in Texas on December 1, 2016.
26. Commission Staff recommends, and Direct agrees to pay, an administrative penalty of Seventy Thousand Dollars (\$70,000) for Direct's violations described in the attached Proposed Order.
27. This Agreement resolves all claims regarding Direct's door-to-door marketing from January 1, 2014 through the date of this Agreement, including the specific complaints addressed herein.
28. Unless specifically provided for in this Agreement, Direct waives any notice and procedures that might otherwise be authorized or required in this proceeding.
29. Nothing in this Agreement shall limit Commission Staff's ability to perform its enforcement functions as set forth in PURA and the Commission's rules.
30. A Party's support of the resolution of this docket in accordance with this Agreement may differ from its position or testimony regarding contested issues of law, policy, or fact in other proceedings before the Commission or other forums. Because this is a settlement agreement, a Party is under no obligation to take the same position as set out in this Agreement in other proceedings not referenced in this Agreement whether those dockets present the same or a different set of circumstances. The Parties' agreement to entry of a final order of the Commission consistent with this Agreement should not be regarded as an agreement as to the appropriateness or correctness of any assumptions, methodology, or legal or regulatory principle that may have been employed in reaching this Agreement.
31. The Parties will avoid additional potential legal expenses and costs by entering this Agreement, and the Parties agree that each shall bear their own legal expenses and costs associated with this Agreement.
32. The Parties contemplate that this Agreement will be approved pursuant to 16 TAC § 22.246(h)(1)(C). In the event the Commission materially changes the terms of this Agreement, the Parties agree that any Party adversely affected by that material alteration

has the right to withdraw from this Agreement, thereby becoming released from its obligations arising hereunder, and to proceed as otherwise permitted by law to exercise all rights available under law. The right to withdraw must be exercised by providing the other Party written notice within 20 calendar days of the date the Commission files the final order acting on this Agreement. Failure to provide such notice within the specified time period shall constitute a waiver of the right to withdraw and acceptance of the material changes to this Agreement made by the Commission.

33. This Agreement is the final and entire agreement between the Parties regarding Direct's door-to-door marketing from January 1, 2014 through the date of this Agreement and supersedes all other communications among the Parties or their representatives regarding its terms.
34. Each person executing this Agreement represents that he or she has been authorized to sign on behalf of the Party represented. Copies of signatures are valid to show execution. If this Agreement is executed in multiple counterparts, each is deemed an original but all of which constitute the same Agreement.
35. Direct warrants that it has read this Agreement carefully, knows the contents thereof, and signs the same as its free act.

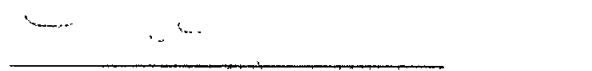
EXECUTED by the Parties by their authorized representatives designated below.

ON BEHALF OF DIRECT ENERGY, LP



Brad Thompson
King & Spalding, LLP
401 Congress Ave., Ste. 3200
Austin, TX 78701

Date: 6/26/17



Taylor Kilroy
Attorney – Oversight and Enforcement Division
Public Utility Commission of Texas

Date: 6/26/17

DOCKET NO.

AGREED NOTICE OF VIOLATION	§	PUBLIC UTILITY COMMISSION
AND SETTLEMENT AGREEMENT	§	
RELATING TO DIRECT ENERGY LP'S	§	
VIOLATION OF PURA §§ 17.004(a)(1)	§	OF TEXAS
AND 39.101(b)(6), RELATING TO	§	
CUSTOMER PROTECTIONS AND	§	
SAFEGUARDS AS WELL AS 16 TAC §§	§	
25.474, RELATING TO SELECTION OF	§	
A RETAIL ELECTRIC PROVIDER,	§	
25.475, RELATING TO GENERAL	§	
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REQUIREMENTS, 25.481, RELATING	§	
TO UNAUTHORIZED CHARGES AND	§	
25.495, RELATING TO	§	
UNAUTHORIZED CHANGE OF	§	
RETAIL ELECTRIC PROVIDER	§	

PROPOSED ORDER

This Order approves the settlement agreement and report to Commission (Agreement) between Commission Staff and Direct Energy, LP and its affiliates (Direct) regarding Commission Staff's investigation of Direct for violation of PURA¹ §§ 17.001(a) and 39.101(b)(6) as well as 16 Tex. Admin. Code §§ 25.474 (TAC), relating to selection of a retail electric provider (REP); 25.475, relating to general retail electric provider requirements; 25.481, related to unauthorized charges, and 25.495, relating to unauthorized change of retail electric provider. The Agreement resolves all issues in this docket. Commission Staff recommended an administrative penalty of \$70,000. Direct agreed to pay the recommended administrative penalty. The Agreement is approved.

The Commission adopts the following findings of fact and conclusions of law:

I. Findings of Fact

1. Direct is a retail electric provider (REP) as defined in PURA §§ 31.002(17) and 16 TAC § 25.5. Direct is certified by the Commission as a REP in accordance with PURA § 39.352 and 16 TAC § 25.107. Direct's REP certification number is 10040.

¹ Public Utility Regulatory Act, Tex. Util. Code §§ 11.001-58.303 (West 2016), §§ 59.001-66.017 (West 2007 & Supp. 2016) (PURA)

2. Commission Staff investigated a series of informal complaints relating to door-to-door sales vendors from January 1, 2014 through February 1, 2016. These complaints were both ones received by the Commission's Customer Protection Division as well as by Direct.
3. Direct devoted teams of employees to establishing and maintaining processes for door-to-door sales vendors, and Direct's personnel trained door-to-door agents. Vendor and agent performance is continually managed and monitored, and customer inquiries and complaints are addressed when they occur.
4. One customer complaint alleged that a door-to-door salesman representing Direct failed to wear clear and conspicuous identification while attempting to sell Direct's products.
5. One customer complaint alleged that Direct conducted a verification of enrollment in a language other than the language used in the sales transaction.
6. Six customer complaints alleged that sales agents representing Direct participated in the verification of authorization process.
7. Thirteen customer complaints alleged that Direct failed to audio record the entirety of the applicant's verification of authorization.
8. One customer complaint alleged that Direct failed to obtain personal access verification data prior to the final confirmation by the applicant that they wish to enroll with Direct.
9. Two customer complaints alleged that Direct continued the enrollment process when the applicant failed to provide consent.
10. Two customer complaints alleged that Direct failed to enact a switch on the date requested by the applicant resulting in early termination fees being levied by the previous REP.
11. One customer complaint alleged that a salesperson representing Direct identified themselves as the applicant's current REP at that time.
12. One customer complaint alleged that Direct assessed a fee that was not disclosed to the customer prior to signing up for service and was not informed the fee would appear on

their bill. The fee in question was levied against the previous resident but appeared on the current customer's billing.

13. One customer complaint alleged that Direct was informed by a customer of an inadvertent gain on January 14, 2015, but that Direct did not notify the registration agent of the unauthorized change of REP until March 25, 2015.
14. Direct ceased door-to-door solicitations in Texas on December 1, 2016.
15. Direct fully cooperated with Commission Staff's investigation.
16. Direct acknowledges the violations detailed in this Order.
17. Direct participated in one or more settlement discussions with Commission Staff to resolve this matter.
18. On June 26, 2017, the Parties entered into the Agreement resolving the alleged violations. Commission Staff recommended, and Direct agreed to pay, an administrative penalty of \$70,000.
19. The Agreement provides for a reasonable resolution of this dispute.

II. Conclusions of Law

1. The Commission has jurisdiction over this matter pursuant to PURA §§ 14.001, 14.002, 14.051, 15.023, and 39.101.
2. Direct is a retail electric provider as defined in PURA §§ 31.002(17) and 16 TAC § 25.5.
3. Direct was provided proper notice of Commission Staff's investigation in this matter, the results of the investigation, information about its right to a hearing, and an opportunity to explain its activities.
4. Under PURA §§ 17.004(a)(1) and 39.101(b)(6), each customer is entitled to be protected from fraudulent, unfair, misleading, or deceptive practices, including protection from being billed for services that were not authorized or provided.
5. Under 16 TAC § 25.474(f)(1)(B), a REP is required to have its sales force wear clear and conspicuous identification of the REP.

6. Under 16 TAC 25.474(f)(4)(C), a REP is required to conduct verification of enrollment in the same language used in the sales transaction.
7. Under 16 TAC 25.474(f)(4)(E), a REP's sales representative is prohibited from participating in the enrollment verification process.
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10. Under 16 TAC 25.474(f)(5)(C), a REP is forbidden from deeming an enrollment valid in the event the applicant does not consent to be switched to the REP and forbids the REP from submitting a switch request for the applicant's service.
11. Under 16 TAC 25.474(k), a REP is required to submit a move-in or switch so that the move-in or switch will be processed on the approximate scheduled date agreed to by the applicant.
12. Under 16 TAC 25.475(c)(1)(A), the REP is required to provide communications which are and not misleading, fraudulent, unfair, deceptive or anti-competitive. Furthermore, pursuant to 16 TAC 25.475(c)(1)(A)(iv), a REP or any of its agents is forbidden from falsely suggesting, implying or otherwise leading someone to believe the person is a representative of a TDU or any other REP.
13. Under 16 TAC 25.481(b)(1), a REP is required to inform the customer of all associated charges and that the associated charges will appear on the customer's electric bill.
14. Under 16 TAC 25.495(a)(1), a REP is required to notify the registration agent of an unauthorized change of REP as promptly as possible.
15. Direct violated the provisions of PURA and Commission rules listed in this section of the Order in its past door-to-door marketing, as further described in the complaints outlined in this Order.

16. The Agreement is a report of settlement to the Commission as required by 16 TAC § 22.246(h).
17. This docket was processed in accordance with applicable statutes and Commission rules.
18. The requirements for informal disposition under 16 TAC § 22.35 have been met in this proceeding.

III. Ordering Paragraphs

In accordance with these findings of fact and conclusions of law, the Commission issues the following order:

1. The Agreement, attached to this Order as Attachment 1, is approved, and the parties shall be bound by its terms.
2. Direct shall pay an administrative penalty to the Commission in the amount of \$70,000. Direct shall remit full payment of the administrative penalty before thirty calendar days after the date this Order is signed. Payment of the administrative penalty may be made by check payable to the Public Utility Commission of Texas and shall reference this docket. If paying by check, the check shall be sent to the following address:

Public Utility Commission of Texas
P.O. Box 13326
Austin, Texas 78711
ATTN: Fiscal Services
3. Direct shall file an affidavit of payment in this docket no later than five calendar days after the payment is made.
4. The Commission shall not be constrained in any manner from requiring additional action or penalties for violations that are not raised here.
5. Entry of this Order does not indicate the Commission's endorsement or approval of any principle or methodology that may underlie the Agreement. Entry of this Order shall not be regarded as a binding holding or precedent as to the appropriateness of any principle or methodology underlying the Agreement.

6. All other motions, requests for entry of specific findings of fact and conclusions of law, and any other request for general or specific relief, if not expressly granted herein, are denied.

SIGNED AT AUSTIN, TEXAS the _____ day of _____, 2017.

PUBLIC UTILITY COMMISSION OF TEXAS

KENNETH W. ANDERSON, JR., COMMISSIONER

BRANDY MARTY MARQUEZ, COMMISSIONER